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#11

Applicant: Christopher Scott Thorman et al.
Serial No.: 09/597,069
Filed: 19 June 2000 (Atty. Ref. 15301-US)
For: A CLEANING DEVICE FOR A MOWER CUTTING CHAMBER
Moline, IL 61265

Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

Petition to Withdraw Holding of Abandonment under 37 CFR §1.181(a)

Sir:

This is a petition under 37 C.F.R. §1.181(a), as guided by MPEP § 711.03(c), part I, to request withdrawal of the 14 September 2001 holding of abandonment in the above identified case.

In support of this Petition, Applicants first note the following summary of events and their associated relevant dates:

- (1) Filing Receipt granting a filing date of 20 June 2000 dated 11 August 2000;
- (2) Petition to Correct Filing Date and Date-In Discrepancy Under 37 CFR 1.10(c) dated 14 September 2000 and receiving a filing date of 19 September 2000;
- (3) Decision on the Petition filed 19 September 2000, mailed 08 November 2000, wherein such Petition was dismissed;
- (4) Renewed Petition under 37 C.F.R. §1.10(c) dated 30 November and receiving a filing date of 11 December 2000;
- (5) Decision on the Renewed Petition filed 11 December 2000, mailed 05 February 2001, wherein such Petition was dismissed; and
- (6) Notice of Abandonment, Decision on Petition, mailed 14 September 2001.

As is evident in the documents listed above, Applicants requested in the Petition dated 14 September 2000 to have the case accorded a filing date of 19 June 2000. The initial Petition and the Renewed Petition were dismissed for failure to provide a true copy of the USPS "Express Mail" label showing 19 June 2000 as the "date-in". The reason expressed for that dismissal in each petition was that "... because this petition still lacks a true copy of the Express Mail mailing label as required under 37 C.F.R. §1.10(c)(3) . . . , *this petition is **dismissed**.*" The decisions each continue with the statement that "[a]ny request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision.", (emphasis added).

The second of the two quoted statements above, as outlined in the Decisions dated 08 November 2000 and 05 February 2001 and particularly in the 05 February 2001 Decision on the Renewed Petition, provides an *invitation* to submit a response *rather than a requirement* for a response. This is seen in the statement's wording such that "[a]ny request for reconsideration . . . must be submitted", emphasis added, as opposed to affirmatively requiring "a" response in which the failure to do so would properly lead to abandonment. Because Applicants elected to no longer challenge the accorded filing date of 20 June 2000, no request for reconsideration was submitted. Thus, it is submitted that a response was not required because the issue is the changing of an accorded filing date and not the further reply necessary to obtain issuance of a patent.

Applicants submit that "the required reply" necessary to avoid abandonment in an application, as that reply is referenced in 37 C.F.R. §1.135, is inapplicable in this case. In contrast, abandonment is appropriate in a case in which a further reply is required and Applicant does not provide a reply. See 37 C.F.R. §1.135 (stating "(a) If an applicant of a patent application fails to reply within the time period . . . , the application will become abandoned unless an Office action indicates otherwise. (b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. . . .", emphasis added).

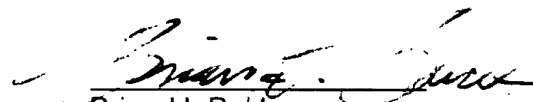
In summary, although Applicants did file a Renewed Petition that requested a filing date earlier than 20 June 2000 after receiving the 08 November 2000 on the Petition, no further remedial attempts after the 05 February 2001 Decision on the Renewed Petition turning down that request were taken. Such attempts were not required for continued processing and prosecution of the case, as discussed above, nor was a specific request made by the Office for further information that would serve to invoke the possibility for abandonment under 37 C.F.R. §1.135. See 05 February

2001 Decision on Petition, page 3 (noting that Petitioner "... needs to supply the "Express Mail" receipt in order to establish the exact earlier date of deposit" if a further Renewed Petition seeking a change in the accorded filing date would be submitted); see also 37 C.F.R. §1.10(f) (explaining that "[t]he Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question."). Rather, Applicants offer the supposition that the instant Notice of Abandonment was transmitted due to a belief that this case was never accorded an original filing date and that further attempts to obtain any filing date were no longer pursued. This is not the case.

Therefore, it is respectfully requested that the holding of abandonment be withdrawn and that prosecution on the merits of this case proceed.

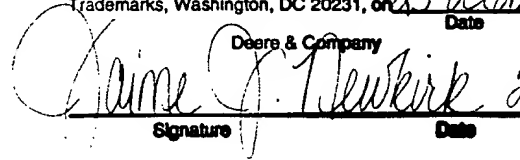
A copy of the Notice of Abandonment mailed 14 September 2001 has been attached. Any fees or charges due as a result of filing of the present paper may be charged against Deposit Account 04-0525. Two duplicates of this page are enclosed.

Respectfully,


Brian H. Buck

Brian H. Buck
Reg. No. 48,776
c/o Deere & Company
One John Deere Place
Moline, Illinois 61265-8098
(309) 765-4371

I hereby certify that this correspondence is being deposited
with the United States Postal Service as first class mail in
an envelope addressed to: Commissioner of Patents and
Trademarks, Washington, DC 20231, on 25 October 2001
Date


Deere & Company
Signature Date 25 October 2001



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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/597,069	06/20/2000	Christopher Scott Thorman	15301-US

CONFIRMATION NO. 6207

ABANDONMENT/TERMINATION
LETTER



Michael C Hlavaty
c/o Deere & Company
One John Deere Place
Moline, IL 61265-8098

Date Mailed: 09/14/2001

NOTICE OF ABANDONMENT

Decision on Petition

The above-identified application is **abandoned** for failure to timely reply to the Decision on Petition mailed on 02/05/2001.

Note: A nonprovisional application may not be relied on for benefits under 35 U.S.C. 120 and 37 CFR 1.78, **unless the processing and retention fee set forth in 37 CFR 1.21(l) is paid within the one year period set forth in 37 CFR 1.53(f)**. A provisional application may not be relied on for benefits under 35 U.S.C. 119(e) and 37 CFR 1.78, **unless the basic filing fee is paid**.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(c).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(c).

Any questions concerning petitions to revive should be directed to "Office of Petitions" at (703) 305-9282.

A copy of this notice MUST be returned with the reply.

Customer Service Center